

In the Court of Appeals of the State of Alaska

Kalen Hudson Selby,
Appellant,

v.

State of Alaska,
Appellee.

Trial Court Case No. **3AN-18-07822MO**

Court of Appeals No. **A-13304**

Order

Motion to Reconsider Supplemental
Briefing Order

Date of Order: **10/16/2020**

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

Kalen Hudson Selby was convicted of the minor offense of driving with a revoked license.¹ Selby appealed.

Following the completion of briefing on appeal, this Court ordered the State to file additional briefing responding to Point No. 4 in Selby’s “Statement of Issues Presented for Review” — *i.e.*, that “[t]he [trial] court would not see [his] motions and briefs or give [him] the chance to show evidence.” Court of Appeals File No. A-13304 (Order dated May 7, 2020). We acknowledged that Selby had not addressed this point in the “Argument” portion of his brief, but we concluded that — given Selby’s status as a *pro se* litigant and the obvious nature of the apparent error by the trial court — the point was sufficiently raised. *Id.* at 2.

The State filed a motion for reconsideration, contending that Selby’s due process claim was waived due to inadequate briefing. Selby then filed a Supplemental Responsive Brief, which we accepted and treated as a response to the State’s motion for reconsideration.

¹ AS 28.15.291(a)(2), (b)(2).

After further consideration of these pleadings, as well as the original briefs in this case, it appears that we have misconstrued Selby's claim in Point No. 4. Based on the point listed in Selby's statement of issues, we initially believed that he was attempting to contest the magistrate's failure to formally inquire, at the close of the State's evidence, whether he had any evidence to present.

But in his response to the State's motion for reconsideration, Selby instead continues to reiterate his central claim: that the district court lacked jurisdiction over him and his case. Selby does not contend that he was prevented from presenting additional *factual* evidence, but rather that the trial court lacked the authority to adjudicate him for this offense as a matter of law. We note that the only portions of the transcript on which Selby relies in his response are those portions (at pages 5-6, 12, and 18) in which he contested the court's jurisdiction or sought an opportunity to file his legal arguments in writing.²

Accordingly, IT IS ORDERED:

1. The State's motion for reconsideration is GRANTED. The order for supplemental briefing, dated May 7, 2020, is RESCINDED.
2. We will issue a separate opinion addressing the claims raised in Selby's appeal, including his jurisdictional claim.

² We also note that, although the magistrate did not expressly inform Selby at the conclusion of the trooper's testimony that he had the right to present evidence, the magistrate at one point asked Selby whether there were "any other matters that [he] wanted to discuss other than the factual matter of [his] license being suspended." The magistrate also offered to set Selby's case aside and give him additional time, after taking up other matters. Selby declined.

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Entered at the direction of the Court.

Clerk of the Appellate Courts

/s/ R. Montgomery-Sythe

Ryan Montgomery-Sythe, Chief Deputy Clerk

cc: Court of Appeals Judges
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